***THE HON'BLE MR JUSTICE V.V.S.RAO**

+ WRIT PETITION Nos.14075, 14152, 14233, 14260 AND 14279 OF 2006

% Dated 03.08.2006

S.Yedukondalu and others.

… Petitioners.

VERSUS

$ The District Collector and others.

… Respondents.

! Counsel for Petitioners: Mr.K.Chidambaram and others.

^Counsel for Respondents: G.P.for Revenue and others.

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? Cases referred

1. (2004) 8 SCC 14
2. (2004) 8 SCC 453
3. (1993) 2 SCC 84
4. (1996) 2 SCC 549
5. (1997) 9 SCC 78
6. (1999) 2 SCC 384
7. 1999 (3) ALD 42
8. (1979) 4 SCC 485
9. (1980) 2 SCC 471

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.14075, 14152, 14233, 14260 AND 14279 OF 2006

DATED:03.08.2006

BETWEEN

S.Yedukondalu and others.

… Petitioners

and

The District Collector, West Godavari District and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.14075, 14152, 14233,
14260 AND 14279 OF 2006

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COMMON ORDER:

The petitioners in all these matters are owners of agricultural lands in different villages of West Godavari District. They filed these writ petitions aggrieved by the action of the District Collector in issuing notification under Section 4(1) of the Land Acquisition Act, 1894 (the Act, for brevity), proposing to acquire the land for public purpose. In W.P.Nos.14075, 14152 and 14233 of 2006, the land is sought to be acquired for providing house sites to persons belonging to weaker sections under a Government Scheme known as Integrated Novel Development in Rural Areas & Model Municipal Areas (popularized by the Government of Andhra Pradesh as Indiramma Scheme). In other two writ petitions, being W.P.Nos.14260 and 14279 of 2006, the land is proposed to be acquired for providing house sites to persons

belonging to weaker sections (not under Indiramma Scheme).

Learned counsel appearing for the petitioners in all the writ petitions raised various grounds in challenging the impugned notifications. A summing up the submissions would show that mainly three grounds are urged. First, when the land is sought to be acquired for providing house sites to weaker sections, there is no warrant for assuming urgency and invoke the power under sub-section (4) of Section 17 of the Act to dispense with enquiry under Section 5-A of the Act. The enquiry provided under Section 5-A of the Act gives a valuable right to the owners of the land to put up their objections before the acquiring authority and seek exclusion of the land from the acquisition. Strong reliance is placed on the decisions of the Supreme Court in **Union of India v Mukesh Hans**[1] and **Union of India v Krishan Lal Arneja**[2]. The counsel also placed reliance on a decision of learned single Judge of this Court in W.P.No.12894 of 2006, dated 27.06.2006 (unreported), in support of the contention that the acquisition for providing house sites to weaker sections is not of emergent nature. Secondly, in the village where the land is sought to be acquired, there is adequate and suitable Government land available, and therefore, the acquisition is contrary to the guidelines issued by the Government and Board of Revenue from time to time prohibiting acquisition of private lands when the Government land is available. Lastly, in some of the writ petitions, they contend that the petitioners are owners of small-holdings and therefore, acquisition of their lands is prohibited under law.

Learned Assistant Government Pleader for Revenue (Land Acquisition) opposed the writ petitions. Placing reliance on the decisions of the Supreme Court in **Rajasthan Housing Board v Shri Kishan**[3], **Chameli Singh v State of U.P**[4], **Union of India v Praveen Gupta**[5], and **Bhagat Singh v State of U.P.,**[6], and a decision of this Court in **Janapareddy Venkateswara Rao v District Collector, Eluru**[7], learned A.G.P. submits that the acquisition of land for providing house sites to weaker sections is of emergent nature and therefore, there is no illegality in dispensing with enquiry under Section 5-A of the Act. Secondly, it is urged that before issuing the notification under Section 4(1) of the Act, the Mandal Revenue Officers conducted proper enquiries in the villages and after coming to conclusion that there is no Government land available and even if the Government land is available, that is not suitable for house sites, proposals were sent to the District Collector, who issued impugned

notifications.

The first question that falls for consideration is whether the impugned notifications are irrational and arbitrary for dispensing with enquiry under Section 5-A of the Act. The Courts have dealt with such issues in number of cases. It is now settled that the right given to owner, whose land is to be acquired, to put up objections in an enquiry under Section 5-A of the Act is not an empty formality. Therefore, Courts have taken a view that if the exercise of power under Section 17(4) of the Act is resorted to in a routine manner and enquiry is dispensed with automatically in every case, the same cannot be sustained. Subject to satisfaction of acquiring authority whether or not to dispense with enquiry under Section 5-A of the Act should be supported by proper material and evidence of consideration of objections raised by the owners whose land is to be acquired. It is also well settled that if it is shown by the State that proper consideration was bestowed by the acquiring authority while dispensing with enquiry under Section 5-A of the Act, the Court cannot substitute its view for that of the authority. Apart from this, Courts have also held that besides the situations contemplated under sub-section (2) of Section 17 of the Act, there are other situations where one can assume the existence of immediate necessity and urgency to prompting dispensation with the enquiry.

Sub-section (2) of Section 17 of the Act contains legislative intention to authorize the Collector to enter upon and take possession of the land after publishing a notice under sub-section (1) of Section 17 of the Act. These are – sudden change in the channel of any navigable river or other unforeseen emergency, for any Railway Administration, for maintenance of railway traffic, for maintaining the system of irrigation, water supply, drainage, road communication or electricity. Section 17 of the Central Act stood substituted in the Act as applicable to State of Andhra Pradesh after the enactment of Land Acquisition (A.P.Amendment) Act, 1976 (Act No.22 of 1976). After amendment, sub-section (2) of Section 17 (as applicable to State of Andhra Pradesh) reads as under.

> **17. Special powers in cases of urgency:--**
>
> (1) omitted.
>
> (2) In the following cases, that is to say.
>
> (a) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station.

(b) whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land--

(i) for the purpose of any library or educational institution, or

(ii) for construction, extension or improvement of --

(a) any building or other structure in any village for the common use of the inhabitants of such village, or

(b) any godown for any society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932, or A.P.Co-operative Societies Act, 1952 (Act XVI of 1952).

(c) any dwelling-house for the poor or

(d) any irrigation tank, irrigation or drainage channel or any well, or

(e) any road, or

or (iii) for any purpose connected with the Nagarjunasagar Project in the area to which the Nagarjunasagar Project (Acquisition of Land) Act, 1972 extends, or

or (iv) for any purpose incidental to or connected with the Visakhapatnam Steel Project, in the area to which the Visakhapatnam Steel Project (Acquisition of Lands) Act, 1972 extends, or

(v) for the execution of any housing scheme under the Andhra Pradesh Housing Board, Act, 1956

or the appropriate Government or the District Collector as the case may be considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation water supply drainage, road communication or electricity the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of [the appropriate Government, or the District Collector as the case may be] enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

(3) (3-A) and (3-B) are omitted.

(4) and (5) are omitted.

The purport of sub-section (2) of Section 17 as amended by A.P.Legislature, in simple terms is that in certain cases, *inter alia,* for construction of a building in a village for the common use of inhabitants of the village and/or for provision of dwelling house for the poor, the Collector can always acquire immediate possession of the land. This necessarily would mean that after issue of notification under Section 4(1) of the Act, the District Collector or the State have to invoke the powers under sub-section (4) of Section 17 of the Act and

then take possession under sub-section (2) of Section 17 of the Act. Thus, the Legislature itself has visualized that whenever there is an acquisition for provision of house sites or dwelling house to the poor, the District Collector can always legitimately invoke the power under Section 17(4) of the Act and dispense with enquiry under Section 5-A of the Act. In such a situation, if enquiry under Section 5-A of the Act is mandated, the same would be ignoring sub-section (2) of Section 17 of the Act and amounts to issue of Mandamus contrary to law. Such a prerogative writ cannot be issued to any public authority either to ignore law or act contrary to law. An analysis of the decisions cited by the learned Assistant Government Pleader also support the view that whenever there is a need for acquiring the land for providing house sites to the weaker sections, there is always urgency and enquiry under Section 5-A of the Act can be dispensed with.

In **Rajasthan Housing Board v Shri Kishan** (supra), notification issued under Section 4(1) of the Rajasthan Land Acquisition Act, 1953 proposing to acquire an extent of Acs.1,580 of land for Rajasthan Housing Board was challenged. A Full Bench of Rajasthan High Court came to the conclusion that notification under Section 17(4) of the Act dispensing with the enquiry under Section 5-A of the Act is illegal and accordingly notification was quashed. Before the Supreme Court, Housing Board placed material to show that there is urgency for construction of houses for weaker sections and middle income groups. The Supreme Court, therefore, held that as Housing Board takes up time bound programmes for construction of houses, the perception of urgency for dispensing with enquiry under Section 5-A of the Act by the authorities was justified. It was observed.

> The material placed before the Court disclosed that the Government found, on due verification, that there was an acute scarcity of land and there was heavy pressure for construction of houses for weaker sections and middle income group people; that the Housing Board had obtained a loan of Rs 16 crores under a time-bound programme to construct and utilise the said amount by March 31, 1983; that in the circumstances the Government was satisfied that unless possession was taken immediately, and the Housing Board permitted to proceed with the construction, the Board will not be able to adhere to the time-bound programme. In addition to the said fact, the Division Bench referred to certain other material also upon which the Government had formed the said satisfaction viz., that in view of the time-bound programme stipulated by the lender, HUDCO, the Board had already appointed a large number of engineers and other subordinate staff for carrying out the said work and that holding an inquiry under Section 5-A would have resulted in

> uncalled for delay endangering the entire scheme and time-schedule of the Housing Board. It must be remembered that the satisfaction under Section 17(4) is a subjective one and that so long as there is material upon which the Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. This is the principle affirmed by decisions of this Court not under Section 17(4) but also generally with respect to subjective satisfaction.

In **Chameli Singh v State of U.P.,** (supra), State of Uttar Pradesh initiated proceedings under Land Acquisition Act by issuing notification under Section 4(1) of the Act to acquire the land for providing houses to persons belonging to Scheduled Castes. The enquiry under Section 5-A of the Act was dispensed with and the Government directed immediate taking up possession. A Division Bench of the Allahabad High Court repelled the challenge made to the acquisition proceedings. Before the Supreme Court, it was contended that in all the acquisitions for housing purpose conducting enquiry should be the rule and dispensing with such enquiry should be exception to rare cases covered by Section 17(2) of the Act. The Supreme Court did not agree with this. The Court came to the conclusion that when the acquisition is for providing houses/house sites to members belonging to Scheduled Castes, and as want of decent residence frustrates the Directive Principles and fundamental rights, urgency clause can always be invoked while acquiring lands for house sites. It is apt to quote the following from the Judgment of the Supreme Court.

> It is true that there was pre-notification and post-notification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry under Section 5-A. As held by this Court, the delay by itself accelerates the urgency: Larger the delay, greater be the urgency. So long as the unhygienic conditions and deplorable housing needs of Dalits, Tribes and the poor are not solved or fulfilled, the urgency continues to subsist. When the Government on the basis of the material, constitutional and international obligation, formed its opinion of urgency, the court, not being an appellate forum, would not disturb the finding unless the court conclusively finds the exercise of the power mala fide. Providing house sites to the Dalits, Tribes and the poor itself is a national problem and a constitutional obligation. So long as the problem is not solved and the need is not fulfilled, the urgency continues to subsist. The State is expending money to relieve the deplorable housing condition in which they live by providing decent housing accommodation with better sanitary conditions. The lethargy on the part of the officers for pre and post-notification delay would not render the exercise of the power to invoke urgency clause invalid on that account.

In **Union of India v Praveen Gupta** (supra), the Judgment of the Delhi High Court quashing the declaration under Section 6 of the Act on the ground that there was no justification for invoking the urgency clause in Section 17(4) of the Act was put in appeal. The acquisition was proposed to shift timber business in old Delhi to outskirts of the village for which purpose, the entire land in two villages was acquired. The apex Court noticed that shifting of timber business from the old city to the outskirts of the city itself is for urgency purpose, namely, to relieve the traffic congestion in the old city, and therefore, reversed the Judgment of the Delhi High Court. After referring to various decisions dealing with the scope of power under Section 17(4) of the Act, the Supreme Court made the following observations.

> In the light of the ratio in a catena of decisions, this Court has consistently held that acquisition of the property for the planned development of the housing accommodation is urgent for acquisition and, therefore, dispensing with the enquiry under Section 5-A, exercising power under Section 17(4) has been held to be valid. It is true that in **Dora Phalaul v State of Punjab**[8] and **State of Punjab v Gurdial Singh**[9] cases, the two-Judge Bench of this Court in each of the cases held that enquiry under Section 5-A may not be dispensed with in a cavalier manner denying the opportunity to file the objections, unless real urgency is shown. Each case has to be considered on its own facts. The very object of enquiry under Section 5-A is whether the land proposed to be acquired is needed or is likely to be needed for the public purpose mentioned in the notification and whether any other suitable land other than the acquired land is needed for the said public purpose. In this case, the entire land in two villages was acquired. It is seen that timber business is being carried on in the walled city of Old Delhi. It has become a source of traffic congestion and that it requires to be shifted urgently from the existing place to relieve the congestion by acquiring the concerned land for the public purpose, namely, establishment of timber depots. It is true that a mention was also made that unauthorised construction has been made in the area proposed to be acquired. If the enquiry was conducted, delay would defeat the very public purpose of acquisition for shifting of timber business from the walled city and establishment of the timber depots outside the walled city. Therefore, the urgency mentioned in exercising the power under Section 4(1) was justified.

In **Bhagat Singh v State of U.P.,** (supra), the question was whether dispensing with enquiry under Section 5-A of the Act for acquiring land for providing for market yard was justified. Answering the question, in the affirmative, the Supreme Court laid down as under.

> … The existing market yard is situated in a very congested locality having no scope for expansion and the place where the market is now located is not sufficient to cater to the growing needs of its constituents. There is no adequate space for free movement and parking of trucks/bullock-carts etc. nor for providing necessary shelter for those who come to the market. The existing market is also devoid of any amenities necessary for hundreds of people who visit the market every day or for the bullocks which are being used to draw the carts. During the rainy season, it becomes well-nigh impossible to find out suitable shelters for the farmers and producers of vegetables. It has become necessary to provide amenities and also construct roads in a planned manner. …..In our view, the subjective satisfaction for dispensing with the inquiry under Section 5-A is based on sufficient material and cannot be faulted. The photographs as to the filthy state of the present mandi with garbage and stray cattle and pigs show that the place is so loathsome that it will be precarious and perhaps hazardous to store vegetables or foodgrains in the existing market. We are, therefore, of the view that the urgency clause was rightly invoked by the Government. There are also enough precedents in connection with acquisition of land for markets where Section 5-A has been dispensed with and such action was upheld.

In **Janapareddy Venkateswara Rao v District Collector, Eluru** (supra), a notification under Section 4(1) of the Act for acquiring land for providing house sites to weaker sections like Dalits and other backward classes by invoking the urgency clause under Section 17(4) of the Act, was challenged. It was urged that there was no urgency to invoke Section 17(4) of the Act. This Court referred to **Chameli Singh v State of U.P.,** (supra) and **Union of India v Praveen Gupta** (supra), and observed that there is always an element of urgency when the Government take steps for providing house sites to solve the housing problem of those belonging to weaker sections. This Court made the following observations.

> …The Judgments of the Supreme Court in **Chameli Singh v State of U.P** (supra), and **Union of India v Praveen Gupta (**surpa) are the authorities to State that when the State proceed to acquire the land for providing house sites to the weaker sections of the society, there is always an element of urgency and that urgency would subsist till the housing problem of those sections of community is solved. Added to this, the Supreme Court in **Union of India v Praveen Gupta (**supra) opined that the decisions of the Government on the question of urgency is an administrative decision and a matter of subjective satisfaction, and the Government need not referred reasons in reaching the satisfaction, and that satisfaction cannot lightly be interfered with by the Court

> unless in a given case, it is shown that the exercise of eminent domain power is nothing short of colourable exercise of power.

The law may, therefore, be taken as well settled that when the State acquires the private land in exercise of its power of eminent domain for providing house sites/houses to persons belonging to weaker sections, scheduled castes, scheduled tribes and backward classes in discharge of its constitutional obligation to provide decent housing, it can always assume that there is urgency. Housing is a basic need, which does not brook any delay. Even if there is some delay due to administrative procedures in initiating proposals, the same does not in any manner dilute the principle that as long as the need for housing remains, urgent action is required by the State. It is the constitutional mandate as well as constitutional duty. In the unreported Judgment relied on by the learned counsel for the petitioners in W.P.No.12894 of 2006, dated 27.06.2006, various decisions of the Supreme Court as well as the decision of this Court were not brought to the notice of this Court. As the decisions of the Supreme Court are binding on this Court, this Court cannot countenance the submission of the learned counsel for the petitioners.

The submission that there is alternative land, and therefore, acquisition of private property cannot be resorted to, cannot be countenanced. I n **Janapareddy Venkateswara Rao v District Collector, Eluru** (supra), this Court held that whether alternative and suitable land is available or not is an issue, which is not justiciable. It was observed.

> The land is acquired for the purpose of providing house sites by the State Government. The writ petitioner has set out in the affidavit certain extents of land belonging to the S.T.V.N.High School and also Smt.Kilambi Seethalakshmi wife of Ramavataram. I do not think it necessary to dilate on this contention. It is well settled by the decisions of this Court in W.P. No.2923 of 1999, dated 16.02.1999 and W.A.No.223 of 1999, dated 25.02.1999, that suitability of a land is not a justiciable issue unless in a given case it is shown that the choice of the land by the State and its authorities is tainted by factual *mala fide* or is done wantonly by the State authorities under the garb of exercise of eminent domain power. That is not the pleading nor the proof in the instant case.

Further, though making an allegation that alternative Government land is available, the petitioners have not placed any material in support of the same nor did they place any material to show that such available alternative Government land is suitable for housing purpose.

In the result, for the above reasons, the writ petitions are dismissed as devoid of any merit. No costs.

(V.V.S.RAO,J)

.08.2006
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[1] (2004) 8 SCC 14
[2] (2004) 8 SCC 453
[3] (1993) 2 SCC 84
[4] (1996) 2 SCC 549
[5] (1997) 9 SCC 78
[6] (1999) 2 SCC 384
[7] 1999 (3) ALD 42
[8] (1979) 4 SCC 485
[9] (1980) 2 SCC 471